IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11753 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UMAR SUMAR BHUDHU GAGADA - Petitioner(s)

Versus

BHUJ AREA DEVELOPMENT AUTHORITY & 1 - Respondent(s)

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Appearance :

MR NV ANJARIA for Petitioner(s) : 1,

MR RM CHHAYA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2005

ORAL JUDGMENT

1.Rule. Mr.RM Chhaya, learned advocate waives service of rule on behalf of the respondents.

2.With the consent of the parties, the matter is taken up for final hearing.

3.In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or directions quashing and setting aside the decisions reflected in the order dtd.5/11/2004 in so far as it seeks to charge Rs.8800.00 per sq.mtrs, with respect of the allotment of Final Plot No.363, Town Planning Scheme No.8 (Bhuj), decided to be allotted to the petitioner on priority basis as earthquake affected person and it is further prayed to direct the respondent – Bhuj Area Development

Authority and its Land Valuation Committee to reconsider the said price on the basis of facts and contentions raised in the present petition and to arrive at a reasonable price to be charged in respect of the allotment of the plot to the petitioner.

4.The petitioner claims to be an earthquake affected person who was affected due to the devastating earthquake took place on 26/1/2001. It is the case of the petitioner that 5 Shops of his family were taken away in road alignment in the Town Planning Scheme after the earthquake and the petitioner preferred Special Civil Application No.16093 of 2003 seeking mandamus against dispossession. The said petition came to be disposed of by order dtd.25/6/2004 on the basis of statement made by the respondent authority that priority will be given to the petitioner while allotting a plot of land in lieu of shops from which the

petitioner was deprived of. It is the case of the petitioner that he submitted an application for allotment of the plot and by letter dtd.23/8/2004, the respondent stated that the petitioner will be treated in priority as an earthquake affected person in the matter of allotment of the land. Thereafter, the Bhuj Area Development Authority took a decision to allot the land in question i.e. Final Plot No.363, area admeasuring 79.69 sq.mtrs at the rate of Rs.8800 per sq.mtrs. It is the contention of the petitioner that the fixation of the price at the rate of Rs.8800 per sq.mtrs, for the allotment of the land in question is illegal and arbitrary and there is no rational in deciding the price an therefore, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

5.Mr.N.V. Anjaria, learned advocate appearing on

behalf of the petitioner has submitted that the petitioner is not informed the basis on which the price of Rs.8800 per sq.mtrs, is determined. It is also further submitted that the adjacent to the land allotted to the petitioner i.e. Final Plot No.363 in question, a plot being Final Plot No.380, area admeasuring 2600 is decided to be alloted at the rate of Rs.2200 by the authority. Mr.Anjariya has also further submitted that even considering the valuation fixed by the Deputy Collector (Stamp Duty) with regard to the Survey Nos.825 and 826, it would come to rs.1500 per sq.mtrs, and therefore, it is submitted that the respondents may be directed to reconsider the valuation fixed at the rate of Rs.8800 per sq.mtrs.

6.In response to the notice issued by this Court, Mr.RM Chhaya, learned advocate appears on behalf of the respondent authority and he has

submitted that the petitioner has been allotted Final Plot No.363 on priority basis, as the petitioner is affected person due to the Town Planning Scheme. It is also further submitted that as per the Town Planning Schemes which are sanctioned by the State Government, certain plot of the Town Planning Schemes area which are allocated in favour of the respondent No.1 as an appropriate authority and the respondent nO.1 authority has adopted a policy of land disposal which is either done by auction or fixing the price by Land Valuation Committee. It is also submitted in the Affidavit-in-reply that as per the land policy, when a plot of land is allotted or is given on priority basis, to any person affected due to earthquake or town planing scheme, while determining the market price of the said land, the respondent authority charges price as per the price determined by the said Price Valuation Committee. It is further submitted that the

criteria which is followed in such cases is that the price which is fetched by way of tender for sale of a plot in the vicinity and/or part of the Town Planing Schemes, is taken into consideration as a base price for determining the market value of a plot in question. It is, therefore, submitted that the price determined at Rs.8800 is based upon the price which is fetched in the auction as per the Land Disposal Policy. It is also further submitted that the price determined by the Town Planning Officer under the Act is determined as on the date of the intention of the scheme and is notional value taking into consideration the various factors and more particularly the factors provided under sections 78, 79, 80 and 82 of the Act. It is further submitted that the Jantri Price which is fixed under the relevant provisions of the Bombay Stamp Act are the prices which were fixed under the said Act before the earthquake and prior to the sanction

of the Town Planning Scheme and the same are proposed rate of land which is considered for the valuation of stamp duty. It is further submitted that however, in the case of determining the market price for allotment of a plot, as said aforesaid, the price which is actually fetched in tender is made the basis and taken into consideration and therefore, considering the same, the price is fixed at the rate of Rs.8800 per sq.mtrs. It is also submitted by Mr.Chhaya that the plot in question is to be given to the earthquake affected person on priority basis and not on concessional basis. It is submitted that if the everything is equal in that case priority is to be given to the earthquake affected person and therefore, it is requested to dismiss the present petition.

7.Heard the learned advocates appearing on behalf of the parties.

8.Having heard the learned advocates for the respective parties and considering the material on record, it is pertinent to note that as per the policy of the respondent authority the plot in question is required to be sold to the earthquake affected person on the priority basis and not on the concessional rate or at the lower price than the actual price. Priority means if everything is equal amongst other persons in that case, the plot is required to be sold to that person in whose favour the priority is given. The contention on behalf of the petitioner that the price of Rs.8800 per sq.mtrs. Is not correct market price and/or there is no basis for the same, cannot be accepted. As stated hereinabove, the price fixed by the authority is as per the land Disposal Policy and the price fixed by the Land Valuation Committee and as per the policy of the Land Disposal, the land is to be sold

either by auction or by fixing the price by the Land Valuation Committee. As stated in the Affidavit-in-reply, as per the land policy, when a plot of land is allotted or is to be given on priority basis to any person affected due to earthquake or town planning scheme, while determining the market price of the said plot, the authority determining the price as per the price determined by the Price Valuation Committee and the criteria which is followed in such cases is that the price which is fetched by way of tender for sale of the plot in the vicinity and/or part of the town planning schemes is taken into consideration as a base price for determining the market value of the plot in question. Considering the aforesaid facts, it cannot be said that the fixation of the market price by the Price Valuation Committee is not rational and/or is arbitrary or illegal. As stated above, the plots are to be sold either by public auction or on the

basis of the price determined by the Price Valuation Committee. A suggestion was also made to the learned advocate appearing on behalf of the petitioner that if as per the petitioner the rate of Rs.8800.00 per sq.mtrs, of the plot in question is at the higher side according to the petitioner and it should be lower, then let the plot be put to public auction and the same will be given to the petitioner on priority basis at the said price, so that one can ascertain the price of the plot in question. But the learned advocate appearing on behalf of the petitioner has refused to accept the said suggestion made by this Court. There is a reason for not accepting the said proposal / suggestion made by this Court, as it appears that the petitioner is aware of the fact that if the plot in question is put to auction, then it may fetch more than Rs.8800.00 per sq.mtrs. The petitioner does not want to purchase the land in question at the price that may be

determined by public auction. Under the circumstances, the contention on behalf of the petitioner that the valuation fixed by the respondent authority at the rate of Rs.8800.00 per sq.mtrs with regard to the plot in question is not correct market value and it should be on lower side, cannot be accepted. There is no compulsion on the part of the petitioner to purchase the land, if the petitioner is of the opinion that the market price which is fixed at Rs.8800.00 per sq.mtrs, with regard to the plot of land in question being Plot No.363 is on higher side, he may not accept the offer and may not purchase the land in question. When the Price Valuation committee has fixed the price at the rate of Rs.8800.00 per sq.mtrs, with regard to the land in question considering the aforesaid criteria, it cannot be said that the same is in any way illegal and/or arbitrary or irrational. The authority cannot be compelled to sell the plot in question at lower price as

the price which the authority will get by selling the plot in question is required to be utilized for the implementation of the Town Planning Scheme. Under the circumstances, the prayers on behalf of the petitioner cannot be granted.

9.For the reasons stated hereinabove, there is no substance in the petition and the same is required to be dismissed and is accordingly dismissed. Notice is discharged.

(M.R. SHAH,J.)

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